

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HOLLY SMART,

11 Plaintiff,

12 v.

13 EMERALD CITY RECOVERY, LLC,

14 Defendant.

CASE NO. C18-0448-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion for default judgment (Dkt. No.
16 43). Having thoroughly considered Plaintiff's motion and the accompanying declarations, the
17 complaint, and the relevant record, the Court hereby GRANTS the motion in part and DENIES
18 the motion in part for the following reasons.

19 **I. BACKGROUND**

20 Plaintiff filed suit against Defendant Emerald City Recovery, LLC ("Emerald City") on
21 March 26, 2018 for violating the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C.
22 § 1692f(6). (Dkt. No. 1.) Emerald City was initially represented by counsel and filed an answer
23 to the complaint on July 11, 2018. (Dkt. No. 26.) On August 14, 2018, Emerald City's counsel
24 filed a motion to withdraw, which the Court granted. (Dkt. Nos. 30, 31.) In its order, the Court
25 directed Emerald City to obtain counsel within 30 days, and noted that failure to do so could
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1 result in the entry of default. (Dkt. No. 21 at 2) (citing W.D. Wash. Local Civ. R. 83.2(b)(4)¹).

2 Emerald City did not retain new counsel. On November 19, 2018, the Court ordered
3 Emerald City to show cause why the Court should not enter default against it for failing to retain
4 counsel. (Dkt. No. 34.) Emerald City did not respond. On December 17, 2018, Plaintiff filed a
5 motion for default against Emerald City, which the Clerk entered. (Dkt. Nos. 37, 42.) Plaintiff
6 now seeks default judgment against Defendants for \$1,000 in statutory damages, \$20,453.87 in
7 actual damages, \$480 in costs, and \$5,145 in attorney fees. (Dkt. No. 43 at 9.)

8 **II. DISCUSSION**

9 **A. Legal Standard**

10 The Court has discretion to enter a default judgment. *See Lau Ah Yew v. Dulles*, 236 F.2d
11 415, 416 (9th Cir. 1956). Default is appropriate where, as here, a party has “failed to plead or
12 otherwise defend” a suit. Fed. R. Civ. P. 55(a). “The general rule of law is that upon default the
13 factual allegations of the complaint, except those relating to the amount of damages, will be
14 taken as true.” *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (citing *Pope v.*
15 *United States*, 323 U.S. 1, 12 (1944)); Fed. R. Civ. P. 8(b)(6). In determining the amount of
16 damages, the Court may—but is not required to—hold a hearing. Fed. R. Civ. P. 55(b)(2)(B). To
17 recover damages after securing an entry of default, the plaintiff must prove the relief it seeks
18 through testimony or written affidavit. *Bd. of Trs. of the Boilermaker Vacation Trust v. Skelly,*
19 *Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).

20 **B. Default Judgment Award**

21 **1. FDCPA Liability**

22 Plaintiff’s amended complaint alleges that Emerald City violated 15 U.S.C. § 1692f(6)

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24 ¹ The rule reads in relevant part: “A business entity, except a sole proprietorship, must be
25 represented by counsel . . . and that failure to obtain a replacement attorney by the date the
26 withdrawal [of counsel] is effective may result in the dismissal of the business entity’s claims for
failure to prosecute and/or entry of default against the business entity as to any claims of other
parties.” W.D. Wash. Local Civ. R. 83.2(b)(4).

1 when it repossessed her car without having a legal right to do so. (Dkt. No. 24-1 at 9.) That
2 provision prohibits debt collectors from “[t]aking or threatening to take any nonjudicial action to
3 effect dispossession or disablement of property if . . . there is no present right to possession of
4 the property claimed as collateral through an enforceable security interest.” 15 U.S.C.
5 § 1692f(6). The amended complaint contains sufficient facts, taken as true, to establish the
6 necessary elements of the alleged FDCPA violation. Plaintiff has pled facts demonstrating that
7 Emerald City was a debt collector for the purposes of FDCPA liability. (Dkt. No. 24-1 at 4–5.)
8 Plaintiff has also pled facts demonstrating that Emerald City took Plaintiff’s car without having a
9 present right to possession. (*Id.*) Therefore, Emerald City is liable to Plaintiff for damages under
10 the FDCPA.

11 2. Statutory Damages

12 The FDCPA allows courts to impose statutory damages “not exceeding \$1,000.” 15
13 U.S.C. § 1692k(a)(2)(A). No proof of actual damages is required to recover under the statute.
14 *Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 780 (9th Cir. 1982). To determine the appropriate
15 amount of statutory damages, the Court considers “the frequency and persistence of
16 noncompliance by the debt collector, the nature of such noncompliance, and the extent to which
17 such noncompliance was intentional” 15 U.S.C. § 1692k(b).

18 Here, Plaintiff asks for the statutory maximum of \$1,000 in damages. (Dkt. No. 43 at 9.)
19 Courts have found an \$1,000 award appropriate where a debt collector violated the FDCPA in a
20 particularly egregious or willful manner. *See Overcash v. United Abstract Group, Inc.*, 549 F.
21 Supp. 2d 193, 196–97 (N.D.N.Y. 2008) (repeated misrepresentations by debt collector). While it
22 is true that Emerald City’s conduct—wrongfully repossessing Plaintiff’s car—was egregious,
23 Plaintiff has not alleged any facts showing that Emerald City’s conduct was anything more than
24 an isolated, unintentional violation of the statute. The Court FINDS that an award of \$500 in
25 statutory damages is appropriate for Emerald City’s violation.

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1 3. Actual Damages

2 In addition to statutory damages, the FDCPA makes debt collectors liable to any person
3 for “any actual damage sustained by such person.” 15 U.S.C. § 1692k(a)(1). Courts in the Ninth
4 Circuit have ruled that emotional distress damages are recoverable under the FDCPA. *See Riley*
5 *v. Giguere*, 631 F. Supp. 2d 1295, 1315 (E.D. Cal. 2009). The Ninth Circuit has also held that an
6 analogous statute, the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681n, 1681o, allows
7 recovery for “emotional distress and humiliation,” which a plaintiff can prove by presenting
8 evidence of her actual emotional distress. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d
9 1329, 1333 (9th Cir. 1995).

10 Here, Plaintiff seeks actual damages for: repairing damage to her car caused by Emerald
11 City (\$310.14); lost pay for missed work (\$56); travel expenses incurred while she was without
12 her car (\$87.73); and emotional distress damages resulting from Emerald City’s violation
13 (\$20,000); all for a total of \$20,453.87. (Dkt. No. 43 at 9.) As an initial matter, the Court FINDS
14 that Plaintiff has provided competent evidence to support her claims for the actual damages
15 resulting from repair of her car, loss of wages, and travel costs (\$453.87). (Dkt. No. 45.)

16 However, the Court FINDS that Plaintiff has not supported her emotional distress
17 damages with competent evidence. In her declaration, Plaintiff states that she was:

18 embarrassed, suffered headaches, nausea, nerves, loss of concentration, insomnia
19 and loss of sleep, anxiety, irritability, frustration and intimidation and suffered
20 emotionally in other ways from the distress of having a stranger come in the middle
of the night to take my car, wake my neighbor(s), damage my car, make various
false misrepresentations and not return it for days.

21 (Dkt. No. 45 at 4.) While Plaintiff was undoubtedly inconvenienced by Emerald City’s action,
22 the Court finds that her statements regarding her emotional distress are conclusory and do not
23 support \$20,000 in damages. Courts that have upheld similar emotional distress awards have
24 done so in cases involving much more pervasive and egregious violations. *See, e.g., Pinner v.*
25 *Schmidt*, 805 F.2d 1258, 1266 (5th Cir. 1986) (approving \$25,000 damages award in FCRA case
26 that was based on debtor’s “humiliation and embarrassment” arising from multiple denials of

1 credit and months spent trying to correct an inaccurate credit report). Therefore, the Court
2 AWARDS Plaintiff emotional distress damages in the amount of \$5,000.

3 4. Costs

4 Plaintiff seeks an award of \$480 for costs: \$400 for a filing fee and \$80 for a process
5 server. (Dkt. No. 44 at 3.) Though these costs appear reasonable, Plaintiff seeks them
6 prematurely. The Local Rules require parties to seek costs “within twenty-one days after the
7 entry of judgment.” W.D. Wash. Local Civ. R. 54(d)(1). Plaintiff’s request for costs is denied
8 without prejudice as premature. After judgment issues, Plaintiff may submit a bill of costs in
9 accordance with Local Civil Rule 54.

10 5. Attorney Fees

11 Plaintiff is entitled to reasonable attorney fees under the FDCPA. 15 U.S.C.
12 § 1692k(a)(3). In fact, in the case of a successful FDCPA action, an award of attorney fees from
13 the opposing party is not discretionary, but mandatory. *Camacho v. Bridgeport Financial, Inc.*,
14 523 F.3d 973, 978 (9th Cir. 2008). To calculate a reasonable fee award, courts employ the
15 “lodestar” method, which multiplies a reasonable hourly rate by the number of hours worked. *Id.*
16 There is a strong presumption that a lodestar calculation is reasonable. *Perdue v. Kenny A. ex rel.*
17 *Winn*, 559 U.S. 542, 552 (2010).

18 Plaintiff properly submitted a list detailing the attorney fees requested. (Dkt. No. 44 at 3.)
19 This list appropriately considers the hours worked by counsel on Plaintiff’s case. *Missouri v.*
20 *Jenkins by Agyei*, 491 U.S. 274, 285 (1989). The Court FINDS the amount of time spent by
21 counsel in preparing Plaintiff’s case was not excessive or duplicative. Counsel’s hourly rate of
22 \$350 is similarly reasonable. The Court has approved similar rates on FDCPA cases. See
23 *McGowan v. Lezema, Lester & Associates, et al.*, Case No. C14-0558-JCC, Dkt. No. 23 at 4
24 (W.D. Wash. 2014). The Court AWARDS Plaintiff \$5,145 in attorney fees.

25 6. Statutory Interest

26 Post-judgment interest shall accrue at the statutory rate as set forth in 28 U.S.C.

¹ § 1961(a). See *Northrop Corp. v. Triad Intern. Marketing*, S.A., 842 F.2d 1154, 1155 (9th Cir. 1988); W.D. Wash. Local Civ. R. 55(b)(2)(B).

3 | III. CONCLUSION

4 For the foregoing reasons, Plaintiff's motion for default judgment (Dkt. No. 43) is
5 GRANTED in part and DENIED in part. The Court GRANTS judgment against Defendant
6 Emerald City Recovery, LLC and in favor of Plaintiff Holly Smart in the following amounts:

- Statutory damages - \$500
- Actual damages - \$5,453.87
- Attorney fees - \$5,145

10 Post-judgment interest will compound at the statutory rate as set forth in 28 U.S.C.
11 § 1961(a) as of the date of this order.

DATED this 30th day of January 2019.

John C. Coyner

John C. Coughenour
UNITED STATES DISTRICT JUDGE